

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
Docket No. 54258

MICHAEL J. FLYNN,

Plaintiff,

v.

CHURCH OF SCIENTOLOGY OF CALIFORNIA, INC.,
CHURCH OF SCIENTOLOGY OF BOSTON, INC.,
KEVIN TIGHE,
ROBERT JOHNSON, and
DAVID ADEN,AFFIDAVIT

Defendants.

AFFIDAVIT OF HARVEY A. SILVERGLATE
IN OPPOSITION TO PLAINTIFF'S MOTION
TO DISMISS WITHOUT PREJUDICE

HARVEY A. SILVERGLATE, being first duly sworn, deposes and says:

1. I am a member of the Bar of this Commonwealth, and I am co-counsel, along with Eric Blumenson, Esq., for the defendant Church of Scientology of Boston, Inc., in this case. My firm is also counsel to the Church of Scientology of California, Inc. and the individual defendants. I make this affidavit in opposition to the motion of the plaintiff, Michael J. Flynn, Esq., to dismiss this entire case without

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prejudice. I submit this affidavit in order to provide this Court with the necessary background information to place plaintiff's current motion in the context of Mr. Flynn's four-year campaign to harass and burden the various Churches of Scientology with litigation. As demonstrated herein, Flynn has filed suit after suit with the aim of burdening the Churches, and time after time has withdrawn claims in order to avoid any final rulings on the merits. As detailed in the accompanying affidavit of Eric Blumenson, this is precisely the end plaintiff seeks here: having begun this litigation and having realized that this Court was unlikely to find in his favor, legally and factually, plaintiff hopes to withdraw this action and seek a different forum where he hopes to prevail without opposition.

2. The plaintiff in this case, also a member of the Bar of this Commonwealth, is the self-proclaimed leader of a massive litigation campaign being waged against the Church of Scientology throughout the United States. Scientology is a world-wide religion with several million adherents and with a presence in many American cities, including Boston. Scientology represents itself as "an applied religious philosophy" based upon the writings and teachings of the religion's revered Founder, L. Ron Hubbard.

3. Attorney Flynn has, since late 1979, been engaged in a massive litigation campaign against the Scientology

movement, which campaign has sought, and continues to seek, to force the movement and its individual Churches around the country to settle the litigation for a large sum of money. The current proceedings in this case must be viewed in the context of this overall strategy.

4. Toward the beginning of his four-year campaign to squeeze a large settlement out of the Church of Scientology, Attorney Flynn wrote a series of letters to Church Attorney Jay D. Roth of Los Angeles, California, in which Mr. Flynn set forth in rather frank terms his goals. Mr. Flynn stated in a letter to Mr. Roth, dated June 2, 1981 (appended to this affidavit as Exhibit "A") that unless the Church promptly settled all of the Flynn litigation for "not less than 1.6 million dollars", he would file an "additional 8-10 cases" forthwith. Two weeks later Mr. Flynn escalated the threat by noting that he was in the process "of associating with 5 additional lawyers in various cities in connection with 20 additional lawsuits". (See Flynn letter to Roth, dated June 17, 1981, appended as Exhibit "B" hereto.)

5. Indeed, Mr. Flynn's plan for his Scientology litigation grew well beyond even these boundaries. At one point in time he had developed a scheme to generate numerous class actions and individual actions numbering as high as a thousand cases. Mr. Flynn calculated that it costs the Church, "conservatively", approximately \$100,000, to defend

each such lawsuit brought against it. Another section of that "program" detailed how Mr. Flynn expected to recover up to 35 million dollars in damages from 50 "turnkey" lawsuits. (See excerpts from Mr. Flynn's "Class Action Case Development Program", appended hereto as Exhibit "C".) Thus, Mr. Flynn hoped to represent, and took steps toward locating, thousands of disgruntled Scientologists who might bring suit against their former Church, alleging for the most part "religious fraud" causes of action. Indeed, during 1981, Mr. Flynn was contacting lawyers around the country seeking recruits. See, for example, Exhibit "D" hereto, a memorandum posted on the bulletin board of a Los Angeles law firm, O'Melveny & Myers, on February 26, 1981, by one of Mr. Flynn's law school classmates, describing Mr. Flynn as a "church-buster" who "has made a substantial living suing the Church of Scientology. . . ." and who was soliciting lawyers to join his team.

6. The aforementioned documents make it abundantly clear that Mr. Flynn's strategy has been to threaten this religious movement with so many lawsuits (costing large sums of money to defend) that the Church would be forced to pay him tribute of well over a million dollars. In this view, every disgruntled or former Scientologist becomes a potential plaintiff who could sue for one form or another of religious fraud, clerical malpractice, breach of promise or contract, and so forth. The Church might be faced with an endless stream of expensive-to-defend litigation, such that even if

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the Church were to win each case, the litigation could break the Church financially -- hence the use of the descriptive term "church-busters" by Mr. Flynn's classmate in Exhibit "D".

7. This strategy is revealed by Mr. Flynn's conduct in various cases he has filed against the Church. The pending case of La Venda Van Schaick v. Church of Scientology of California, Civil Action No. 79-2491-G (U.S. District Court, D. Mass.) was filed in December of 1979 as a massive, \$200 million purported class action. However, Mr. Flynn never bothered to seek certification of the class, preferring, instead, to file one after another individual "religious fraud" lawsuits against the various Churches of Scientology, obviously keeping in mind his estimate that it cost the Church "conservatively" more than \$100,000. to defend each suit. U.S. District Judge W. Arthur Garrity, Jr. dismissed 7 of the 14 counts in that suit, including all of the class action counts, on March 26, 1982. Thereafter, Mr. Flynn dismissed, piecemeal, all but one of the remaining seven counts. These voluntary dismissals typically occurred, interestingly enough, at points in the litigation when the Church had moved to join an issue. For example, when the Church moved for summary judgment on half of the remaining counts at one point, Mr. Flynn moved to dismiss that portion of the complaint, after full briefing and four hours of oral argument on the Church's

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motion for summary judgment. The Church had been optimistic about winning that summary judgment motion, and I believe that Mr. Flynn saw the handwriting on the wall after the oral argument and dismissed his claim rather than allow an adverse ruling against him on the merits.

8. The allegations in the instant case mirror to a great extent some of the allegations being made by Attorney Flynn on behalf of his client in the Van Schaick federal action. In that case, the plaintiff is claiming that Church agents picked his trash (or, as he puts it, stole documents from his "office and office compound" -- the trash dumpster presumably being in the "compound") and that information gleaned therefrom was used for harassment purposes and to separate lawyer and client. Indeed, there has been substantial litigation in the Van Schaick case relating to the very "trash documents" which are at issue in this case.

9. Attorney Flynn has recently filed yet another action making similar allegations. On September 7, 1983, Mr. Flynn, as the plaintiff, filed Michael J. Flynn v. Lafayette Ronald Hubbard, a/k/a L. Ron Hubbard, Civil Action No. 83-2642-C (U.S. District Court, D. Mass.). That complaint (a copy of which is appended as Exhibit "E" hereto) includes extensive allegations similar to those in the instant case, except that this new federal suit names only L. Ron Hubbard, Scientology's Founder, as the lone defendant. Mr. Flynn has

apparently named Mr. Hubbard alone, refraining from naming all of the other parties previously sued for allegedly picking his trash (including all of the defendants in the case at bar), because he expects that Mr. Hubbard will not appear to defend, and hence Mr. Flynn stands a chance of obtaining a default judgment without ever having to prove any of his charges. See Exhibit "F" hereto, Mr. Flynn's "Motion to Strike Letter Dated September 14, 1983", paragraph 7, in which Mr. Flynn notes: "It is speculation at this point that Mr. Hubbard will ever appear."

10. Although no depositions have yet been taken in the instant case, it would be misleading to conclude that the case is not far advanced in terms of discovery. The fact is that numerous witnesses in the instant case have been deposed in one or another of Mr. Flynn's other cases against Scientology. Counsel for the defendants in the case at bar see no need to depose those same people again, unless and until it becomes clear that there is information needed from them which has not already been obtained. Indeed, to have repeated here any of those depositions would doubtless have produced from the plaintiff herein a cry of "harassment" as a result of "duplicative" discovery. For example, very recently Mr. Flynn's office has accused Church counsel of harassment for seeking to take depositions in the Van Schaick case of witnesses who were previously deposed in other of

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Mr. Flynn's Scientology cases. (See letter from Michael Tabb of Mr. Flynn's office, to David Fine, dated October 4, 1983, Exhibit "G" hereto.) It thus cannot be held against the Church that it has been spare and selective in conducting discovery. Furthermore, a very substantial amount of investigation has been conducted, and much legal research has been done as well. (This case, after all, has already been to the Appeals Court on Mr. Flynn's motion for a preliminary injunction.)

11. Furthermore, Mr. Flynn has given wide publicity to his litigation against Scientology in general, and to his allegations of harassment arising from the "trash picking" in particular. On one occasion, he posed with the allegedly "stolen" documents for an article in PEOPLE Magazine of January 24, 1983 (Exhibit "H"). Furthermore, more than a week before he filed his complaint in the Flynn v. Hubbard case, he turned a copy of the draft complaint over to a newspaper reported for the North Shore Weeklies chain of papers, which published a story in which Mr. Flynn's allegations concerning the "trash picking" and other charges of harassment were given great prominence. (Copy of newspaper article is appended hereto as Exhibit "I".) Thus, a loss by Mr. Flynn on the merits of the case at bar could prove to be an embarrassment to Mr. Flynn.

12. In addition, it has been part of Mr. Flynn's litigation strategy not only to multiply the number of cases that the Church must defend, but also to avoid having any of those cases decided against him. (See discussion in paragraph 7, above, of his strategic retreats in the Van Schaick case.) He has made numerous public statements to the effect that he has been successful in his Scientology litigation. Thus, while he apparently told his law school classmate (see Exhibit "D") that he "has made a substantial living suing the Church of Scientology", the fact is that Mr. Flynn has not recovered a single dollar from any of this litigation to date. Similarly, in a brochure mailed out by Mr. Flynn to other lawyers, seeking to enlist their aid in his "class action development program" against Scientology, he makes the claim that "we have won practically every motion before the various courts and have won every major motion, such as motion to dismiss". (Exhibit "J", "History of Involvement of Law Offices of Michael J. Flynn in Lawsuits Against the Church of Scientology", at page 12 of that document.)

13. This is not the only of Mr. Flynn's cases in which duplicative litigation involving the same issues has been brought. For example, Mr. Flynn represents one Paulette Cooper, who is the plaintiff against the Church of Scientology in numerous cases. She filed a tort action in 1978 in

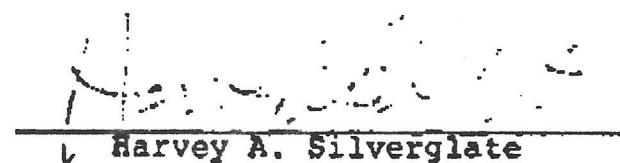
California and a virtually identical action in 1981 in Massachusetts against the Church of Scientology of California and various other defendants. Cooper v. Church of Scientology of California, No. CV782054RMT (C.D. Cal.) and Cooper v. Church of Scientology of Boston, Inc., et al., No. 81-681-MC (D. Mass.). In the latter action, Ms. Cooper was represented by the plaintiff herein, Michael Flynn. United States District Judge Robert M. Takasugi, presiding over the California case, explicitly found that the plaintiff had filed duplicative lawsuits and had engaged in forum shopping, and enjoined Ms. Cooper from prosecuting her action against the Church of California in the Massachusetts court (Exhibit "K"). Subsequently, District Judge John McNaught stayed all litigation of the Massachusetts action against all defendants, until completion of the earlier filed California case (Exhibit "I"). Judge McNaught acted despite the fact that neither the identity of the parties nor the claims in the two actions were precisely congruent.

14. It is thus my view, based upon my experience in defending Mr. Flynn's Scientology litigation and upon a view of his overall litigation strategy, that Mr. Flynn is desperately seeking to avoid a loss on the merits in the case at bar, and that he has thus chosen to make his allega-

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tions against a new defendant -- one that he is convinced will not appear to defend -- in his new federal action, which he hopes will result in a default judgment against the reclusive Founder of the religion of Scientology. Dismissal of the action at bar, without prejudice, would further that strategy, but it would also condemn these defendants to having to appear and defend themselves in an endless array of lawsuits, never to have a single one of them result in a final judgment. The plaintiff's apparent policy has been, and continues to be, that "he who fights and runs away, lives to fight another day". This is a fine strategy for survival "on the street", but it is an inappropriate strategy for the courtroom, where defendants must spend time, money, and energy defending their reputations and their assets.

Signed under the pains and penalties of perjury on this 11th day of October, 1983, at Boston, Massachusetts.



Harvey A. Silverglate

Exhibits "A" through "L" attached hereto.

Exhibits to the Affidavit
of Harvey A. Silverglate
in Opposition to Plaintiff's
Motion to Dismiss without
Prejudice

Exhibit "A": Letter of Michael J. Flynn to Jay D. Roth, dated June 2, 1981

Exhibit "B": Letter of Michael J. Flynn to Jay D. Roth, dated June 17, 1981

Exhibit "C": Excerpts from "Class Action Development Plan"

Exhibit "D": Memorandum posted on bulletin board at Los Angeles, California, law firm of O'Melveny & Myers

Exhibit "E": Complaint in Michael J. Flynn v. Lafayette Ronald Hubbard a/k/a L. Ron Hubbard, filed September 7, 1983

Exhibit "F": "Motion to Strike Letter Dated September 14, 1983," filed by plaintiff in Michael J. Flynn v. Lafayette Ronald Hubbard a/k/a L. Ron Hubbard on September 23, 1983

Exhibit "G": Letter of Michael A. Tabb, Esq., to David J. Fine, Esq., dated October 4, 1983

Exhibit "H": Excerpt from PEOPLE MAGAZINE issue of January 24, 1983

Exhibit "I": "Michael Flynn's One-Man War: A Boxford Man's Singlehanded Battle against the Scientology Cult," from "The Region" section of the TRI-TOWN TRANSCRIPT issue of August 31, 1983

Exhibit "J": "Exhibit #1: History of Involvement of Law Offices of Michael J. Flynn in Lawsuits against the Church of Scientology"

Exhibit "K": "Injunction" and "Findings of Fact and Conclusions of Law" issued by Hon. Robert M. Takasugi in Paulette Cooper v. Church of Scientology of California, etc. (U.S. District Court, Central District of California)

Exhibit "L": "Memorandum and Order" issued by Hon. John J. McNaught in Paulette Cooper v. Church of Scientology of California, et al. (U.S. District Court, District of Massachusetts)